

RECORDATION NO. **27458** FILED

APR 11 '08 -1 15 PM

SURFACE TRANSPORTATION BOARD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

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OF COUNSEL  
URBAN A. LESTER

April 11, 2008

Ms. Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Interim User Agreement, dated as of March 27, 2008, a primary document as defined in the Board's Rules for the Recordation of Documents.

The name and address of the party to the enclosed document are:

Vendor: National Steel Car Limited  
600 Kenilworth Avenue, North  
Hamilton, Ontario, L8N 3J4  
Canada

[Purchaser: AllCapital Rail Management, LLC  
601 Montgomery Street, Suite 325  
San Francisco, CA 94111]

Ms. Anne K. Quinlan, Esq.  
April 11, 2008  
Page 2

A description of the railroad equipment covered by the enclosed document  
is:

240 railcars: MWAX 3011 - MWAX 3145 and MWAX 4501 - MWAX  
4605.

A short summary of the document to appear in the index is:

Interim User Agreement.

Also enclosed is a check in the amount of \$35.00 payable to the order of  
the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the  
undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a stylized flourish at the end.

Robert W. Alvord

RWA/sem  
Enclosures

RECORDATION NO. 27458 FILED

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SURFACE TRANSPORTATION BOARD

INTERIM USER AGREEMENT

ORIGINAL *Chasman*  
COPY P5935/07  
COPY P5940/07 *PL*  
4/7/08

THIS INTERIM USER AGREEMENT, dated as of March 27, 2008, by and between National Steel Car Limited, a Canadian corporation ("*NSC*") and AllCapital Rail Management, LLC, a Delaware limited liability company ("*Purchaser*").

WITNESSETH:

WHEREAS, Purchaser desires to acquire the use of the 2400cf Open Top Hopper railcars and the 2500 c.f. Gondola railcars, bearing and to bear railroad road marks and numbers set forth on Schedule 1 hereto (collectively, the "*Cars*" and individually, a "*Car*");

WHEREAS, Purchaser and NSC have contracted for the purchase and sale of the Cars pursuant to two (2) separate Purchase Agreements dated February 1, 2008 (P5940/07) and February 1, 2008 (P5935/07) (collectively, "*Purchase Agreements*");

WHEREAS, Purchaser is obtaining commitments to finance the purchase of the Cars designated as the "First Closing Cars" in Schedule 1 (the "*First Closing Cars*") pursuant to one or more permanent forms of financing (the "*Financing*") and anticipates that there will be one closing, with the closing date to occur on or about April 14, 2008 for the First Closing Cars and will purchase the Cars designated as the "Subsequent Closing Cars" in Schedule 1 ("*Subsequent Closing Cars*") at subsequent closings on the dates specified in Schedule 1 for the Subsequent Closing Cars under the heading "Expected Closing Date", provided, however, that such anticipated closing date for a Car shall be delayed by one business day for each business day that an invoice for such Car is received by Purchaser after the anticipated date of receipt of the invoice for such Car as set forth in Schedule 1 under the heading "Invoice Date" (such anticipated closing date for any Car (as so delayed, if necessary in accordance with this paragraph), the "Payment Due Date" for such Car); and

WHEREAS, Purchaser desires that it be permitted to use and lease the Cars pending the closing of such Financing, and the financing for the Subsequent Closing Cars and NSC is willing to grant such temporary custody and possession to Purchaser, solely upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Subject to the terms and conditions contained herein and in the Purchase Agreements, NSC agrees to deliver physical possession of the Cars to Purchaser. The rights of Purchaser hereunder in respect of each Car shall commence on the date of acceptance of each group of Cars by Purchaser from NSC, with respect to the Cars accepted thereunder (the "*Acceptance*") and, unless sooner terminated pursuant to the provisions hereof, shall end on the date of payment of the purchase price of such Car by Purchaser (the "*Closing*"). Whether or not the Financing shall then have occurred, Purchaser, on the Payment Due Date for the First Closing Cars, shall purchase and pay for, in cash, all of the First Closing Cars delivered and accepted by Purchaser and not previously paid for by Purchaser or its designee, and the obligation of Purchaser so to do shall be absolute and unconditional, regardless of the condition

of such Cars or any other event or circumstance. In addition, Purchaser shall pay for, in cash, all of the Subsequent Closing Cars delivered and accepted by Purchaser on the respective Payment Due Dates for such Subsequent Closing Cars. At each Closing with respect to any Cars, NSC shall sell such Cars to Purchaser, at the purchase price set forth in the applicable Purchase Agreement, plus applicable taxes and other charges, if any, as set forth in the applicable Purchase Agreement. Nothing in this Agreement shall relieve Purchaser of its obligation to take, purchase and pay for the Cars in accordance with the terms of the Purchase Agreements nor shall it relieve NSC of its obligations under the Purchase Agreements except that the timing of the payment for the Cars by Purchaser is modified in accordance with this Section 1.

2. On Acceptance of any Car, Purchaser shall assume the responsibility and risk of loss with respect to such Car and will deliver to NSC a Certificate of Acceptance substantially in the form attached to each Purchase Agreement as Exhibit C (the "*Certificate of Acceptance*"). Execution of the Certificate of Acceptance by Purchaser shall constitute acceptance by Purchaser of the Cars identified in the Certificate of Acceptance for all purposes of this Agreement and the Purchase Agreements.

3. Full and complete title to the Cars shall remain in NSC until the Closing for such Car and Purchaser's rights and interests therein shall be solely that of temporary possession, custody, and use under this Agreement. Neither Purchaser nor any person claiming by, through or under Purchaser shall acquire any title to or ownership of the Cars, or any portion thereof, by virtue of this Agreement or the temporary possession and use of the Cars by Purchaser under or pursuant to this Agreement. Transfer of title to any Car to Purchaser or to any purchaser provided by Purchaser shall be effected only at Closing by payment of the full amount due under the applicable Purchase Agreement and this Agreement in respect of such Car and by delivery by NSC of a bill of sale to Purchaser; provided, however, that title to different Cars may be transferred at different times and under separate bills of sale, to the extent that such Cars shall be subject to different financing arrangements. When the purchase price of any Car has been paid in full to NSC, together with all other amounts payable to NSC hereunder with respect to such Car, and NSC has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such Car without further action by or notice to any party concerned. Prior to delivery of any Car, Purchaser shall do such acts as may be required by law, or requested by NSC, for the protection of NSC's title to and interest in the Cars, including, without limitation, recording, at Purchaser's expense, a fully signed counterpart of this Agreement with the Surface Transportation Board ("*STB*"), with the corresponding offices in Canada if any of the Cars will be used in Canada, and wherever else necessary to protect NSC's interest. Upon receipt of all payments required to be made hereunder and under the applicable Purchase Agreement with respect to any Cars, NSC shall, at the request of Purchaser, deliver to Purchaser or its designee a release of NSC's right, title and interest in such Cars and any Lease (as hereinafter defined), such release to be in form suitable for filing with the STB and with any other filing office wherein evidence of such right, title and interest has been filed.

4. This Agreement is an arrangement under which Purchaser will have temporary possession, custody, use and quiet enjoyment of the Cars to be purchased from NSC, and the risk of loss of the Cars after Acceptance is on Purchaser. Purchaser will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of

liability and loss payment provisions) as are in keeping with the terms applicable to other railcars owned or leased by Purchaser: (i) public liability insurance against loss or damage for personal injury, death or property damage occurring as a result of the ownership, maintenance, use or operation of any Car; and (ii) property damage insurance on the Cars. Any liability insurance policies maintained by Purchaser while this Agreement is in effect shall name NSC as an additional insured and Purchaser agrees to provide NSC, upon NSC's reasonable request, with such information concerning any insurance policies maintained by Purchaser as NSC may reasonably request.

5. Purchaser agrees, so long as this Agreement remains in effect, immediately after delivery of the Cars, that none of the Cars shall be shipped beyond the boundaries of the United States, except with the prior written consent of NSC.

6. In addition to any other rights or remedies which NSC may then have under law, upon default by Purchaser in performing any term of this Agreement or the applicable Purchase Agreement (as modified hereby), NSC, upon one day's prior notice (or, in the event of a non-payment default, upon five days' prior notice) may, but shall not be obligated to, terminate this Agreement, and upon such termination, Purchaser shall, if requested by NSC, immediately assemble all of the Cars, make them available to NSC at such place or places as NSC may designate and store, protect, maintain and preserve the Cars pending receipt of further instructions from NSC, and shall thereafter transport all or any portion of the Cars to such place or places as NSC shall designate, all at the sole risk and cost of Purchaser.

7. It is the intent of the parties that NSC shall suffer absolutely no loss as a result of this Agreement and Purchaser agrees that it will permit no liens of any kind to attach to the Cars (other than liens created by NSC) and that it will (a) indemnify, defend, and save harmless NSC from and against all claims, expenses, costs, or liabilities of whatsoever kind or nature arising out of retention by NSC of title to the Cars or out of the temporary possession, use and operation thereof by Purchaser during the period when title thereto remains in NSC, or otherwise out of this Agreement (including without limitation consequential damages and lost profits under the Purchase Agreement) and (b) pay any and all taxes, (other than income taxes imposed on NSC by any foreign, federal, state or local taxing authority and any fines, charges or penalties imposed against NSC in connection with any such income taxes), fines, fees, charges, and penalties that may accrue or be assessed or imposed upon the Cars or NSC because of its retention of title to the Cars after Acceptance and prior to payment of the purchase price therefor (or the return of the Cars to NSC) or because of any person's use, marking, operation, management or handling of the Cars after Acceptance and while title to such Cars remains in NSC pursuant to this Agreement prior to payment of the purchase price therefor (or the return of the Cars to NSC). Each party agrees to indemnify and hold harmless the other for any claims or costs imposed on the indemnified party as a result of a breach of this Agreement by the indemnifying party.

8. Purchaser shall, at its own expense, keep and maintain the Cars in good order, repair and running condition and will, at its option, repair or replace or promptly pay to NSC the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement. The design, construction or specifications of any Car, or any part thereof, may not be changed without the prior written approval of NSC. Purchaser shall

maintain, use and operate the Cars in compliance with all applicable laws, rules and regulations, including, without limitation, the Interchange Rules of the Association of American Railroads.

9. Prior to the physical delivery of any Car to Purchaser not heretofore delivered to Purchaser, such Car will be marked and numbered with its appropriate road designation; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by Purchaser upon both sides of each Car in letters not less than one inch in height the following words:

Ownership Subject to an Agreement filed with the STB

Purchaser agrees to cause said legend to be marked on each Car heretofore delivered to Purchaser.

No road marks or numbers shall be placed on the Cars other than those specified in the first "Whereas" clause of this Agreement.

10. Purchaser hereby assigns all of its right, title and interest in and to all master lease agreements, schedules thereto, leases, operating agreements, use agreements, car hire contracts or per diem agreements (each, a "Lease") it has entered into in respect of any Cars, provided that such assignment shall not be effective if (x) in the case of a First Closing Car, the payment of the full purchase price therefor is paid by Purchaser to NSC on or before the Payment Due Date for such First Closing Car and (y) in the case of a Subsequent Closing Car, the payment of the full purchase price therefor is paid by Purchaser to NSC on or before the Payment Due Date for such Subsequent Closing Car. On the Closing of any Cars, in addition to the amounts to be paid to NSC for the purchase of such Cars pursuant to the provisions of Section 1 hereof, Purchaser agrees to pay NSC in United States funds, by wire transfer to an account specified by NSC, to compensate NSC for its agreement to allow Purchaser to take possession of and use such Cars prior to the Closing, all amounts paid or due and payable to Purchaser (or its designee) under its Lease of such Cars for the period from the date of Acceptance of such Car to the date of Closing of such Car net of any amounts reasonably paid by Purchaser in respect of such Car for operation and maintenance expenses, insurance and taxes; provided however, this Section 10 shall be waived as to the Lease of a particular Car and the payments due under the Lease in respect of a particular Car so long as (x) if such Car is a First Closing Car, the payment of the full purchase price therefor is paid by Purchaser to NSC on or before the Payment Due Date for such First Closing Car, and (y) if such Car is a Subsequent Closing Car, the payment of purchase price therefor is paid by Purchaser to NSC on or before the Payment Due Date for such Subsequent Closing Car. Purchaser shall have the right to enter into Leases of the Cars. Purchaser shall cooperate and use commercially reasonable efforts to assist NSC on or after the assignment of each Lease in managing the Cars subject to such Lease for such period requested by NSC, and if so requested, for not less than 90 days and thereafter so long as Purchaser is in the railcar management business. Purchaser may charge NSC a management fee not to exceed 5.5% of the monthly rentals received in respect of such Car under the applicable Lease therefor, for the period it manages such Car which may be credited against obligations due from Purchaser to NSC.

11. Purchaser hereby makes the following representations and warranties to NSC, the truth and accuracy of which shall be a condition precedent to the obligation of NSC to deliver any Cars to Purchaser hereunder and to enter into this Agreement:

- (a) Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite power and authority to execute and deliver and to perform its obligations under this Agreement and any related documents delivered by Purchaser in connection herewith (hereinafter collectively referred to as the "*Purchaser Documents*"), to carry on its business as now conducted, and is duly qualified and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under the Purchaser Documents.
- (b) The Purchaser Documents have been duly authorized, executed and delivered by Purchaser, and assuming the due authorization, execution and delivery of such documents by NSC, are legal, valid and binding instruments enforceable against Purchaser in accordance with their terms, except as enforcement may be limited by general principles of equity or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the enforcement of creditors' rights generally.
- (c) No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, or from any of the parties to a Lease is necessary for the execution, delivery and performance by Purchaser of the Purchaser Documents (including, without limitation, the assignment of each Lease to NSC).
- (d) Neither the execution and delivery of the Purchaser Documents nor the consummation of the transaction therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the organizational documents or the by-laws of Purchaser, or of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which Purchaser is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien on the Cars (other than any lien in favor of NSC) or upon any property of Purchaser.
- (e) Neither the execution and delivery by Purchaser of the Purchaser Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order,

award, injunction or decree of any court or governmental instrumentality or arbitrator.

Purchaser shall deliver an opinion of its counsel (which may be in-house counsel) to NSC on or before the date hereof with respect to the matters set forth above, such opinion to contain such limitations and qualifications as may be reasonably acceptable to NSC.

12. NSC shall have the right to assign its rights (but not its obligations) under this Agreement, provided that except as may be provided in the Purchase Agreements, NSC shall not have the right to assign its obligations arising under the Purchase Agreements, including, without limitation, its obligation to build and deliver the Cars.

13. This Agreement shall be interpreted under, and its performance shall be governed by, the laws of the State of New York without regard to its conflicts of laws doctrine, and the applicable federal laws of the United States of America.

14. This Agreement, together with the Purchase Agreements, shall be binding upon, and shall constitute the complete agreement between the parties and their respective successors and assigns, with respect to the subject matter hereof, and may be amended or modified only in a writing lawfully executed by the parties hereto. Any provision of this Agreement determined to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

15. Any amounts payable to NSC hereunder which are not paid when due shall bear interest from the due date thereof (which in the case of the purchase price of the Cars, shall commence on the later of the date of Acceptance and the invoice therefor) until paid at the rate of eighteen percent (18%) per annum, but in no event greater than the maximum rate permitted by applicable law.

16. All communications under this Agreement shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such a telecommunications device, when properly transmitted, addressed to each party at the following addresses or to such other address as the party to whom the same is intended shall specify in conformity with the foregoing:

If to NSC:

600 Kenilworth Avenue North  
Hamilton, Ontario  
L8N 3J4, Canada  
Attention: Hugh Nicholson, Executive Vice  
President – Marketing & Sales  
Fax: (905) 547-4069

With a copy to:

Jane E. Jablons  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178  
(212) 808-7660  
Fax: (212) 808-7897

If to Purchaser:

601 Montgomery Street, Suite 325  
San Francisco, CA 94111  
Attn: Desmond P. Hayes, President  
Fax: (415) 644-5979

With a copy to:

AllCapital (US), LLC  
153 E. 53<sup>rd</sup> Street, 55<sup>th</sup> Floor  
New York, NY 10022  
Attention: Charles Knapp  
Fax: (212) 906-4401

17. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto and have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

NATIONAL STEEL CAR LIMITED

By Cecil Mosselman

Name: Cecil Mosselman

Its: Corporate Secretary

ALLCAPITAL RAIL MANAGEMENT, LLC

By D. H. Hays

Name: DERRON HAYS

Its: President

STATE OF CALIFORNIA       )  
                                      )  
COUNTY OF \_\_\_\_\_)   SS:

On this 31<sup>st</sup> day of March, 2008, before me personally appeared Desmond P. Hayes, to me personally known, who, being by me duly sworn, says that he is the President of AllCapital Rail Management, LLC, that said instrument was signed and sealed on behalf of said company by authority of its Members, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said company.



My commission expires: 8-18-2010

A handwritten signature in black ink, appearing to read 'Kristin Elizabeth Therre', written over a horizontal line.

PROVINCE OF ONTARIO        )  
                                      )  
CITY OF TORONTO            )  
                                      )   In the matter of an Interim User  
  )   Agreement between National Steel Car  
  )   Limited and AllCapital Rail Management, LLC  
  )   made as of March 21, 2008

On this day of 27 th day of March, 2008, before me personally appeared Cecil C. Mosselman to me personally known, who, being by me duly sworn, says that he is Corporate Secretary of National Steel Car Limited, that said instrument was executed on behalf of said Corporation by authority of its Board of Directors, that he executed the said instrument on March 27, 2008 on behalf of said Corporation and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said Corporation.

C. Wollaston  
Notary Public in and for the  
Province of Ontario  
  
COLOMBA ANNE WOLLASTON, Notary Public,  
City of Hamilton, limited to the attestation  
of instruments and the taking of affidavits,  
for National Steel Car Limited.  
Expires April 15, 2010

## **SCHEDULE 1**

**240 railcars: MWAX 3011 - MWAX 3145 and MWAX 4501 - MWAX 4605.**

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

4/11/08



\_\_\_\_\_  
Robert W. Alvord